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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
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Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)
_____)

CC Docket No. 96-128

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Federal Communications Commission
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**REPLY COMMENTS
OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL
ON THE PETITION OF TELCO COMMUNICATIONS GROUP INC.
FOR WAIVER OF SECTION 64.1301 OF THE COMMISSION'S RULES**

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June 13, 1997

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The American Public Communications Council ("APCC") submits the following reply comments pursuant to the Commission's Public Notice, DA 97-943, released May 13, 1997.

**I. ANY PER-CALL WAIVER SHOULD APPLY ONLY TO
INTERIM COMPENSATION OF CONSENTING
PAYPHONE PROVIDERS**

APCC opposed Telco's request for a waiver that would allow it to pay interim compensation on per-call basis with or without the consent of payphone service providers ("PSPs"). The RBOC Coalition now states that it has reached agreement to accept interim compensation from Telco on a per-call basis. RBOC Coalition Comments at 4. Pursuant

to this agreement, the Coalition will accept per-call compensation from Telco on two conditions: (1) Telco must pay for all compensable calls, including 0+ calls; and (2) compensation must be paid on a monthly basis. APCC has no objection to voluntary arrangements such as this, which were specifically authorized by the Commission.

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, FCC 96-439, ¶ 129 (1996) ("Order").

However, the RBOC Coalition's agreement to accept per-call compensation from Telco in no way justifies imposition of the same arrangement on other payphone service providers ("PSPs") who have not agreed to accept interim per-call compensation.

The RBOC Coalition has its own reasons for accepting Telco's proposed change in compensation. Specifically, the RBOC Coalition has negotiated with Telco to gain the interim 0+ compensation that was denied them in the Reconsideration of the Payphone Order. While the RBOC Coalition may achieve through negotiation that which it could not get through regulation, other PSPs are entitled to choose for themselves the conditions, if any, under which they are willing to accept interim compensation on a per-call basis.

In short, APCC has no objection to the Commission recognizing the Telco/RBOC Coalition arrangement as a valid mutual agreement, but Telco's waiver request can only have effect within the confines of the Telco/RBOC Coalition compensation relationship. As was pointed out in APCC's Comments, to hold that the

waiver has general effect would unfairly bind non-consenting PSPs to accept less than their prescribed interim compensation, contrary to the Payphone Order.

II. TELCO'S WAIVER WOULD EVISCERATE THE INTERIM COMPENSATION RULE

The comments of confirm APCC's position that Telco's petition essentially requests a standardless waiver, and that granting it will invite additional waivers that eviscerate the interim compensation rule. MIDCOM correctly states the general proposition that a waiver from Commission rules is appropriate only if (1) special circumstances warrant a deviation from the general rule; and (2) allowing such a deviation serves the public interest. MIDCOM Comments at 4. This two pronged test is not met in this case. The circumstances cited by Telco and its supporters are not "special" to Telco, and provide no principled basis for preventing any other IXC from demanding and receiving a per-call waiver.

MIDCOM cites Telco's ability to track calls as a special circumstance which justifies approval of its waiver petition. MIDCOM Comments at 4. This is not a special circumstance. As Ameritech points out, the Commission's Order mandates that such technology be implemented by all IXCs by November 7, 1997. Ameritech Comments at 4. The ability to deploy technology which has been proven to be feasible, and the

deployment of which will be required in a few months, should not be considered "special."¹

Unlike MIDCOM, Business Telecom Inc. ("BTI") claims that the special circumstance justifying Telco's waiver, is the fact that Telco's flat rate payments exceed what it will pay under a per-call scheme.

The interim compensation scheme, however, is based upon average call volumes. Such a scheme inherently mandates that some carriers inevitably will pay more than they would under the per-call scheme while others will pay less. This is an inescapable result which is not unique to Telco. The Commission previously denied a request to exclude low usage payphones from interim flat rate compensation. In doing so, it explicitly recognized that under a flat rate compensation scheme, some PSPs might be "overcompensated" and that some might be "undercompensated." Reconsideration ¶ 127 and APCC Comments at 5. BTI, Telco and any other IXC that seeks this form of a waiver are essentially trying to improperly revisit the interim compensation decisions that the Commission has already made. The arguments of these IXCs were more properly raised below.

The comments of BTI and MIDCOM show that what APCC predicted is already happening -- other all IXCs who believe their payment obligations would be less

¹ MIDCOM's reliance on the Commission's prior approval of waivers of AT&T and Sprint is misplaced since these prior waivers, when viewed in their proper historical context, provide no support for Telco's petition. In granting waivers to AT&T and Sprint, the Commission considered these petitioner's ability to track calls as a special circumstance because at that time it was uncertain whether such tracking was technically feasible. Telco's early compliance with the Commission's generally applicable requirements cannot be equated to the voluntary experiments of AT&T and Sprint with capabilities previously deemed unfeasible. Ameritech Comments at 4.

under an interim per call structure are rushing to file similar waivers. BTI's Comments at 1, MIDCOM Comments at 5. Indeed, MIDCOM states that it will shortly seek a waiver. ("MIDCOM will be filing a similar petition in the near future. "MIDCOM Comments at 5.) If the Commission begins granting waivers on this basis, PSPs will be denied proper interim compensation since the amount compensated will be less than \$45.85.

III. TELCO'S WAIVER SHOULD NOT BE HELD IN ABEYANCE -- THE COMMISSION SHOULD REJECT ITS GENERAL EFFECT NOW

AT&T contends that Telco's petition should be held in abeyance until the Court of Appeals issues its decision in Illinois Public Telecommunications Association v. FCC AT&T Comments at 2. APCC sees no reason to hold the waiver request in abeyance. As discussed, Telco has failed to justify any waiver that imposes different obligations on unconsenting PSPs. Nothing in the pending appeals is likely to change that result.

AT&T also correctly recognizes that granting Telco's waiver would place additional burdens on all IXCs that have their payment obligations adjusted. AT&T Comments at 4. Moreover, in the unlikely event that the Commission grants Telco's waiver petition and makes it retroactive, the burdens associated with a retroactive waiver (see APCC's Comments at 10-15) would be even worse.²

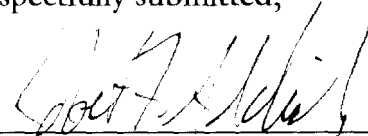
CONCLUSION

² No party even attempts to show why -- assuming any waiver could be justified -- it is permissible to grant a retroactive waiver as Telco requests.

None of the commenting parties have suggested a rationale for granting Telco's waiver request and giving it effect over all PSPs. The RBOC Coalition and Telco have apparently worked out a mutual arrangement to pay per call interim compensation. This is precisely what the Order allows and therefore APCC has no objection to the Commission granting a waiver to allow Telco to pay the RBOC Coalition per call compensation. However, there is no basis for making that the waiver binding on other PSPs that have not consented to receive per-call compensation. Accordingly, those portions of the waiver request that seek to unilaterally alter Telco's interim compensation obligations should be denied.

Dated: June 13, 1997

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Christopher T. McGowan, hereby certify that a copy of the foregoing Reply Comments was sent to each of the following parties by hand delivery on this 13th day of June, 1997.

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